




## When Preventing Beauty Discrimination Turns Ugly

Shortly after he won the Republican primary  for U.S. Senate in Kentucky, Rand Paul was subjected to an all-out media assault for daring to suggest that the Civil Rights Act of 1964, at least to the extent that it interfered with private property rights, might have been an exercise in congressional overreach. How dare he suggest that business owners have the right to discriminate against people on the basis of race? What is he, some kind of racist?

The implicit notion is all this, of course, is that anyone who opposes anti-discrimination laws is a bigot. He cannot simply have a different opinion on how best to eradicate such discrimination, i.e., by persuasion rather than by force. Everyone knows that racial discrimination is wrong; therefore, everyone must agree that it should be illegal.

Besides the fact that government prohibitions on private discrimination are violations of property rights and the right to freedom of association (see Walter Williams' recent [column](#) on the subject), the problem is that government is never content to interfere just a little bit in our private affairs. Economist Lew Rockwell [explains](#) that because such interference "is dictated by political pressure[, it] is hardly surprising, then, that since the Act passed in 1964, the grounds that the regulators say they can discern and thereby forbid have proliferated and are now completely out of control."

The latest example of this out-of-control attempt to eliminate the last vestiges of freedom of association is suggested by Stanford law professor Deborah Rhode, who has written a book entitled *The Beauty Bias* in which she makes the case for banning discrimination on the basis of a person's appearance. Dahlia Lithwick, [writing](#) about Rhode's tome for *Newsweek*, says that "discrimination against unattractive women and short men is as pernicious and widespread as bias based on race, sex, age, ethnicity, religion, and disability." Lithwick then details some of the research cited by Rhode:

[Eleven] percent of surveyed couples say they would abort a fetus predisposed toward obesity. College students tell surveyors they'd rather have a spouse who is an embezzler, drug user, or a shoplifter than one who is obese. The less attractive you are in America, the more likely you are to receive a longer prison sentence, a lower damage award, a lower salary, and poorer performance reviews. You are less likely to be married and more likely to be poor.

Are these unfortunate circumstances that bespeak a culture obsessed with youth and beauty? Yes. Are they things the government can and should try to eliminate via positive law? Aside, perhaps, from prison sentencing, no.

Lithwick writes: "Critics such as Andrew Sullivan claim that if we legally ban appearance discrimination, the next step will be legal protection of 'the short, the skinny, the bald, the knobbly kneed, the flat-chested and the stupid.'" Lithwick, citing Rhode, dismisses such concerns since "Michigan and six other locales" already have anti-looks-discrimination laws and have not seen an explosion of lawsuits under them; and besides, "the legal system will have taken a symbolic step toward



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greater tolerance that may have the effect of shifting social views, as did *Brown v. Board of Education* (with regard to race discrimination) and *Lawrence v. Texas* (with respect to gay rights)."

But is it the government's job to change society, or is it society's job to change the government? Lithwick and Rhode clearly believe it is the former. Thus, if some Neanderthal Americans still prefer pretty girls to ugly ones, the government needs to force them to like ugly ones. Furthermore, this problem, says Lithwick, "is compounded by a virtually unregulated beauty and diet industry and soaring rates of elective cosmetic surgery." Time to call in the FDA to regulate beauty out of existence!

Nor is Sullivan's argument really unreasonable. The 1964 Civil Rights Act and related state laws, after all, started out as bans on racial and religious discrimination, but since then these protections have been extended to, among others, women, the disabled, homosexuals, bisexuals, and transsexuals. Anyway, the traits Sullivan lists are appearance-related, so wouldn't discrimination against people with those traits of necessity be prohibited under Rhode's preferred legal regime?

Lithwick ultimately resigns herself to the fact that because both men and (perhaps especially) women prefer beauty to ugliness, it's probably not possible to ban appearance discrimination at this time. Nevertheless, the fact that Lithwick, Rhode, and other opinion shapers believe that the government has both the right and the duty to interfere in private matters should concern both the drop-dead gorgeous and the pitifully homely among us. Discriminating against unattractive people may not be pretty, but violating people's rights to associate freely is downright ugly.

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